



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 7**

11201 Renner Boulevard  
Lenexa, Kansas 66219

**GENERAL NOTICE LETTER  
URGENT LEGAL MATTER  
PROMPT REPLY NECESSARY**

**CERTIFIED MAIL: RETURN RECEIPT REQUESTED**

Patrick Ottensmeyer  
President and Chief Executive Officer  
Kansas City Southern Railway Company  
427 West 12<sup>th</sup> Street  
Kansas City, Missouri 64105

Re: General Notice Letter and Request for Information for the Cherokee County Superfund Site,  
Operable Unit 08 in Cherokee County, Kansas

Dear Mr. Ottensmeyer:

Under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), commonly known as the federal Superfund law, the EPA is responsible for responding to the release or threat of release of hazardous substances, pollutants or contaminants into the environment – that is, for stopping further contamination from occurring and for cleaning up or otherwise addressing any contamination that has already occurred. The EPA has documented that such a release has occurred at the Cherokee County Superfund Site (Site). The EPA has spent public funds to investigate and control releases of hazardous substances or potential releases of hazardous substances at the Site. Based on information presently available to the EPA, the EPA has determined that Kansas City Southern Railway Company (KCS) may be responsible under CERCLA for the cleanup of the Site and the costs that the EPA has incurred in responding to Site conditions.

Also, this letter requests information from KCS pursuant to the authority of Section 104(e) of CERCLA. The agency is requesting your cooperation in providing information and documents relating to the contamination at the Site and, specifically, the rail lines the agency believes were constructed and operated by KCS. (See Enclosure A.)

**Background**

The EPA has documented the release or threatened release of hazardous substances, pollutants, or contaminants at the Site. The EPA placed the Site on the National Priorities List (NPL), set forth at 40 C.F.R. Part 300, Appendix B, by publication in the Federal Register on September 8, 1983, 48 Fed. Reg. 40658. Mining operations contaminated soils, groundwater, and surface water at this 115-square-mile



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Superfund Site with lead, zinc and cadmium. The EPA divided the Site into subsites and nine operable units (OUs), including an OU comprised of rail lines.

The EPA identified and designated Cherokee County Operable Unit # 08, Railroads (CCR OU8) in 2012. Enclosure B depicts the general boundaries of the Site as well as the rail lines that comprise CCR OU8. Work at CCR OU8 has consisted of, among other things, the remedial investigation (RI) that began in 2013, and the feasibility study (FS) that began in 2015. Based on these investigations and studies and other assessments, the EPA has selected a cleanup approach (formally known as a remedial action) for the Site, which is described in a Record of Decision (ROD) issued by the EPA on September 23, 2016. (See link to CCR OU8 ROD and other documents at this Site's homepage: <https://cumulis.epa.gov/supercpad/cursites/csitinfo.cfm?id=0700667>.)

### **Explanation of Potential Liability**

Under CERCLA, specifically Sections 106(a) and 107(a), potentially responsible parties (PRPs) may be required to perform cleanup actions to protect the public health, welfare, or the environment. PRPs may also be responsible for costs incurred by the EPA in cleaning up the Site, unless the PRP can demonstrate divisibility or assert one of the statutory defenses. PRPs include current and former owners and operators of a site, as well as persons who arranged for treatment and/or disposal of any hazardous substances found at the site, and persons who accepted hazardous substances for transport and selected the site to which the hazardous substances were delivered.

Based on a review of records related to CCR OU8, the EPA identified KCS as a PRP that contributed hazardous substances to CCR OU8. Specifically, the EPA believes KCS constructed portions of the rail line known as the Baxter Springs Branch or Lawton Branch that extended from Asbury, Missouri to Baxter Springs, Kansas. Construction of the branch occurred in the 1920s. For purposes of CCR OU8, the EPA is focused on that portion of the line existing within Kansas. This line appears to have been constructed and/or maintained utilizing chat from mining operations. Information about this rail line was found in annual reports of KCS and information within decisions and reports of the Interstate Commerce Commission. Following completion of construction, KCS hauled, or authorized the hauling, of mine concentrates over the rail line. Enclosure C is a list of documents the EPA has located regarding the connection of KCS to CCR OU8.

Please note that because the EPA has a potential claim against you, you must include the EPA as a creditor if you file for bankruptcy. The EPA reserves the right to file a proof of claim or an application for reimbursement of administrative expenses.

### **Information to Assist You**

The EPA would like to encourage communication between you, other PRPs, and the EPA related to CCR OU8. The EPA has identified Union Pacific Railroad (UP) and BNSF Railway Company as other PRPs for the Site. On the date of this letter, the EPA is sending UP a General Notice Letter and Request for Information. In October 2018, the EPA notified BNSF of its liability and sought information.

Please give these matters your immediate attention and provide information to the EPA within 45 days. If you have any questions regarding this letter, please contact Elizabeth Blackburn, Remedial Project Manager, at (913) 551-7899 or [blackburn.lizi@epa.gov](mailto:blackburn.lizi@epa.gov). If you have an attorney handling your legal

matters, please direct his or her questions to Danny Lyskowski, Site Attorney, at (913) 751-7931 or [lysowski.daniel@epa.gov](mailto:lysowski.daniel@epa.gov). Thank you for your prompt attention to this matter.

Sincerely,

**PRESTON  
LAW**

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PRESTON LAW  
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Preston Law  
Chief  
Lead Mining and Special Emphasis Branch  
Superfund and Emergency Management Division

Enclosures:

Enclosure A – Information Request

Enclosure B – Map of CCR OU8

Enclosure C – Sources of Information

cc: Union Pacific Railroad Company  
Grant Harse, Lathrop GPM

## **Information Request Instructions and Questions**

### Instructions

1. You are required to provide a separate narrative response to each and every question and subpart of a question set forth in this Information Request.
2. Precede each answer with the number of the question or subpart to which it corresponds.
3. If information or documents not known or not available to you on the date of submission of your response to this Information Request should become known or available to you at a later date, you must supplement your response to EPA. Moreover, should you find at any time after the submission of this response that any portion of the submitted information is false or misrepresents the truth, you must notify EPA of this fact as soon as possible and provide EPA with a corrected response.
4. For each document produced in response to this Information Request, identify the document and indicate on the document, or in some other reasonable manner, the number of the question to which it responds.
5. Identify and provide contact information for the appropriate official or representative of KCS to contact for additional information or clarification of information provided.
6. If you are unable to provide the information requested herein, identify and provide contact information of those parties who may possess such information.
7. Identify all persons consulted in the preparation of answers to these questions and each person's area of expertise.
8. The information requested herein must be provided even though KCS may contend that it includes confidential information or trade secrets. KCS may, if desired, assert a confidentiality claim covering part or all of the information requested, pursuant to Section 104(e)(7)(E) and (F) of CERCLA, 42 U.S.C. § 9604(e)(7)(E) and (F), by segregating such materials for which a claim of confidentiality is being asserted from those materials for which no claim of confidentiality is being asserted, and attaching to those materials for which a claim of confidentiality is being asserted, at the time such materials are submitted, a cover sheet, stamped or typed legend, or other suitable form of notice employing language such as "trade secret," or "proprietary" or "company confidential." Information covered by such a claim will be disclosed by EPA only to the extent, and only by means of the procedures set forth in 40 C.F.R. Part 2, Subpart B. If no such claim accompanies the information when it is received by EPA, it may be made available to the public by EPA without further notice to KCS. KCS should read the above cited statutes and regulation carefully before asserting a business confidentiality claim, since certain categories of information are not properly the subject of such a claim.

## Definitions

The following definitions shall apply to the following words as they appear in this Attachment, unless otherwise indicated:

1. The term "KCS" shall mean the Kansas City Southern Railway Company and its officers, directors, managers, employees, contractors, trustees, successors, assigns, and agents.
2. The term "person" as used herein includes, in the plural as well as the singular, any natural person, firm, unincorporated association, partnership, corporation, trust or other entity.
3. The term "property" shall mean and include all real estate, or other property interests, as defined herein, that KCS either wholly or partially owns or operates (or owned or operated) within the CCR OU 08, including the land where the KCS rail corridors are located, or such lands, or other property interests, as defined herein, that KCS wholly or partially leases or rents.
4. The term "property interest" means any interest in property, including but not limited to, any ownership interest, any interest in the rental of property, any interest in a corporation that owns or rents or owned or rented property, and any interest as either the trustee or beneficiary of a trust that owns or rents, or owned or rented property.
5. The term "CCR OU 08" shall have the same definition as that contained in the 2016 Record of Decision and consists of inactive rail lines within the Cherokee County Superfund Site. (See Attachment B.)
6. The term "Site" shall mean the Cherokee County Superfund Site as described in the CCR OU8 ROD.
7. The term "chat" shall mean waste material formed in the course of mining and milling operations employed to recover lead and zinc or other metals from metal-bearing ore materials.
8. The term "release" has the same definition as that contained in Section 101 (22) of CERCLA, 42 U.S.C. § 9601 (22), and includes any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment.
9. The terms "document" and "documents" shall include: (a) writings of any kind, formal or informal, whether or not wholly or partially in handwriting, including by way of illustration and not by way of limitation, any invoice, receipt, endorsement, check, bank draft, cancelled check, deposit slip, withdrawal slip, order, correspondence, record book, minutes, memorandum of telephone and other conversations including meetings, agreements and the like, diary, calendar, desk pad, scrapbook, notebook, bulletin, circular, form, pamphlet, statement, journal, postcard, letter, telegram, telex, report, notice, message, analysis, comparison, graph, chart, interoffice or intraoffice communications, photostat or other copy of any documents; (b) microfilm or other film record, any photograph, sound recording on any type of device, any punch card, disc or disc pack; (c) any tape or other type of memory generally associated with computers and data processing (together with the programming instructions and other written material necessary to use such punch card, disc, or disc pack, tape or other type of memory and together with printouts of such punch card, disc, or disc

pack, tape or other type of memory); and (d) (1) every copy of each document which is not an exact duplicate of a document which is produced, (2) every copy which has any writing, figure or notation, annotation or the like of it, (3) drafts, (4) attachments to or enclosures with any document and (5) every document referred to in any other document.

10. The terms "and" and "or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of this Information Request any information which might otherwise be construed to be outside its scope.
11. Words in the masculine shall be construed in the feminine, and vice versa, and words in the singular shall be construed in the plural, and vice versa, where appropriate in the context of a particular question or questions.
12. All terms not defined herein shall have their ordinary meaning, unless such terms are defined in CERCLA, RCRA, or Title 40 of the Code of Federal Regulations.

## GENERAL QUESTIONS

1. Identify any **current** property interest of KCS at CCR OU8. State the date each current property interest was acquired and provide copies of all documents evidencing or relating to such interest, including but not limited to purchase and sale agreements, deeds, leases, etc.
  - a. For each current property interest identified, state whether such property was ever used for rail purposes. State whether KCS hauled or authorized the hauling of metals concentrates or mine chat across the property. Provide copies of documents.
  - b. For each current property interest identified, state whether KCS entered into any trackage or other agreements authorizing other entities to haul metals concentrates or mine chat across the property. Identify any parties to such agreements and provide copies of such agreements and documents evidencing the existence of such agreements.
2. Identify any **prior** property interest of KCS at CCR OU8. State the date each interest was acquired and provide copies of all documents evidencing or relating to such interest, including but not limited to purchase and sale agreements, deeds, leases, etc.
  - a. For each prior property interest identified, state whether such property was ever used for rail purposes. State whether KCS hauled or authorized the hauling of metals concentrates or mine chat across the property. Provide copies of documents.
  - b. For each prior property interest identified, state whether KCS entered into any trackage or other agreements authorizing other entities to haul metals concentrates or mine chat across the property. Identify any parties to such agreements and provide copies of such agreements and documents evidencing the existence of such agreements.
  - c. Identify the date of disposition of the prior property interests identified above, whether by conveyance or abandonment, and the grantee or current owner as of that date. Provide copies of documents evidencing disposition of the property interests.
3. Identify all companies, firms, facilities and individuals from whom KCS obtained metals concentrates or mine chat for hauling or use at CCR OU8, including information regarding the following:
  - a. Location and address of each such company or persons who sent such materials;
  - b. Shipping records pertaining to such materials, including but not limited to invoices, bills of lading, weight tickets, and purchase orders; and
  - c. Any agreements relating to said materials.
4. Provide information about the construction and maintenance of rail lines at CCR OU8.
  - a. Provide information about the use of mine chat for the construction or maintenance of rail lines at CCR OU8.
5. Identify all leaks, spills, or releases into the environment of any hazardous substances, pollutants, or contaminants that have occurred at CCR OU8. This includes metals concentrates and mine chat. For purposes of this request # 5.a.—h., do not include information about the placement of materials for construction purposes unless such placement is associated with an accident or other unintentional release. Identify:
  - a. When such releases occurred;
  - b. How the releases occurred (e.g. when the substances were being loaded, stored, delivered by a vendor, transported or transferred).
  - c. The amount of each hazardous substances, pollutants, or contaminants so released;
  - d. Where such releases occurred;
  - e. Any and all activities undertaken in response to each such release or threatened release, including the notification of any agencies or governmental units about the release.



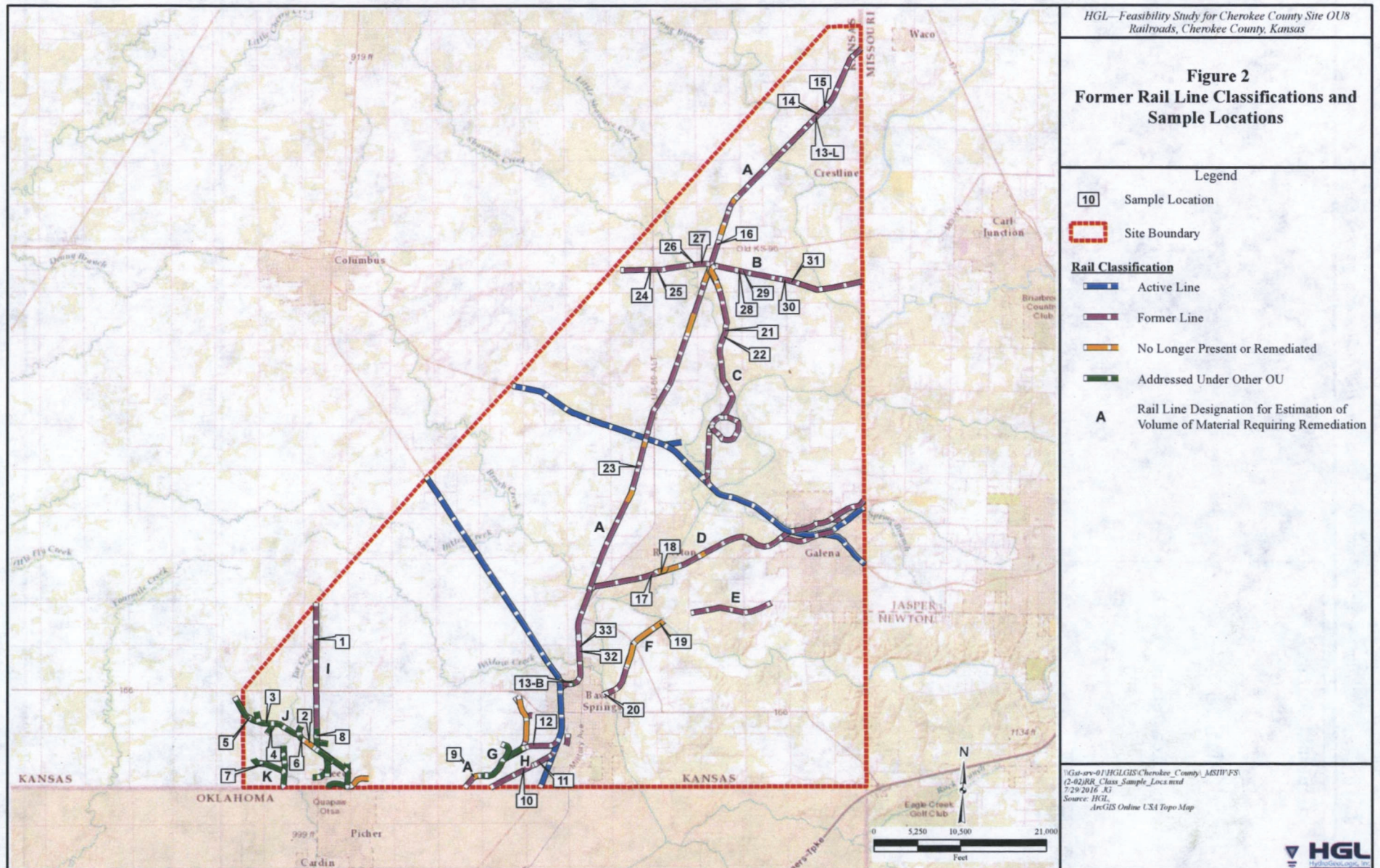
- f. Any and all investigations of the circumstances, nature, extent or location of each release or threatened release including, the results of any soil, water (ground and surface), or air testing undertaken;
  - g. All persons with information relating to these releases; and
  - h. Provide documents relevant to the foregoing, including accident reports, reports filed with any governmental entity (e.g. Interstate Commerce Commission), and internal investigation and review.
6. If any of the documents solicited in this information request are no longer available, please indicate the reason why they are no longer available. If the records were destroyed, provide us with the following:
- a. the document retention policy in place at the time of destruction
  - b. a description of how the records were destroyed (burned, trashed, etc.) and the approximate date of destruction.
  - c. a description of the type of information that would have been contained in the documents.
7. Identify additional repositories or persons that may possess copies of documents sought by this request (e.g., state historical societies, libraries, etc.).

### **SPECIFIC TO THE BAXTER SPRINGS (LAWTON) BRANCH**

The following questions relate specifically to the Baxter Springs Branch (a/k/a the Lawton Branch). To the extent the information sought is provided in response to one of the “General Questions” above, you need not provide duplicative information. But, please indicate with specificity which response above contains the sought information, including by specific reference to a document provided in response to such question.

- 8. Provide information and documents about any contractual relationship authorizing KCS to operate over the branch between the point of Military, Kansas, and Baxter Springs, Kansas. Without limiting the foregoing, on information and belief, EPA believes that section of the branch line was owned by the Kansas, Oklahoma and Gulf Railway Company or the Kansas, Oklahoma and Gulf Railroad Company and an agreement existed between the parties dated July 31, 1925, that allowed KCS to utilize that portion of the branch line.
- 9. Provide information and documents about the development and operation of what is termed the Waco mining Subsite. Without limiting the foregoing, on information and belief, EPA believes that KCS constructed the rail line that bisects this Subsite in 1919. Provide any agreements relating to the hauling of metals concentrates and mine chat from this Subsite.





1. Annual Reports of the Kansas City Southern Railway Company. Retrieved through Google Books. Last visited Apr. 27, 2021.  
Reports reviewed:
  - 1) 20<sup>th</sup> Annual Report
  - 2) 24<sup>th</sup> Annual Report
  - 3) 26<sup>th</sup> Annual Report
2. Reports of the Interstate Commerce Commission. Available through the Hathi Trust <https://catalog.hathitrust.org/Record/003916145>. Last visited Apr. 27, 2021.  
Reports reviewed:
  - 1) 72 ICC 392 (1922)
  - 2) 79 ICC 161 (1923)
3. Abandonment Records of the Surface Transportation Board.  
The Kansas City S. Ry. Co. Abandonment Exemption in Jasper Cty., Mo & Cherokee Cty., Ks, No. AB-103 (SUB 9X).